

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

YUEH CHEN and CHEN C. WU,
individuals,

Plaintiffs,

vs.

PMC BANCORP, a California
corporation, ONEHOMELoan, ONE
WEST BANK, FSB, FIDELITY
NATIONAL TITLE COMPANY, NDEX
WEST, LLC, DEUTSCHE BANK
NATIONAL TRUST COMPANY, and
DOES 1 through 20,

Defendants.

CASE NO. 09cv2704-WQH-BLM
ORDER

HAYES, Judge:

The matter before the Court is the Motion for Judgment on the Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(c), Or, Alternatively, Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56 (“Motion for Judgment on the Second Amended Complaint”), filed by Defendants OneWest Bank, FSB, NDEX West, LLC, and Deutsche Bank National Trust Company (“OneWest Defendants”). (Doc. # 59).

BACKGROUND

On December 3, 2009, Plaintiffs initiated this action by filing a Complaint in this Court. (Doc. # 1). The Complaint asserted various causes of action related to a loan transaction.

On February 26, 2010, Plaintiffs filed a First Amended Complaint “as a matter of course” pursuant to Federal Rule of Civil Procedure 15(a). (Doc. # 24).

On March 17, 2010, the OneWest Defendants filed a motion for judgment on the

1 pleadings. (Doc. # 30).

2 On April 20, 2010, Plaintiffs filed motion for leave to file a second amended complaint.
3 (Doc. # 38).

4 On May 28, 2010, the Court granted the motion for leave to file a second amended
5 complaint and denied the motion for judgment on the pleadings. (Doc. # 56). On June 4,
6 2010, Plaintiff filed the Second Amended Complaint. (Doc. # 57).

7 On June 10, 2010, the OneWest Defendants filed the Motion for Judgment on the
8 Second Amended Complaint. (Doc. # 59).

9 DISCUSSION

10 A district court may properly grant an unopposed motion pursuant to a local rule where
11 the local rule permits, but does not require, the granting of a motion for failure to respond. *See*
12 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1 provides: “If an
13 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that
14 failure may constitute a consent to the granting of a motion or other request for ruling by the
15 court.” S.D. Cal. Civ. Local Rule 7.1(f)(3)(a). “Although there is ... a [public] policy favoring
16 disposition on the merits, it is the responsibility of the moving party to move towards that
17 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics.” *In re Eisen*,
18 31 F.3d 1447, 1454 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to
19 prosecute); *see also Steel v. City of San Diego*, No. 09cv1743, 2009 WL 3715257, at *1 (S.D.
20 Cal., Nov. 5, 2009) (dismissing action pursuant to Local Rule 7.1 for plaintiff’s failure to
21 respond to a motion to dismiss).


22 The docket reflects that Plaintiffs, who are represented by counsel, were served with
23 the Motion for Judgment on the Second Amended Complaint. The Motion for Judgment on
24 the Second Amended Complaint and the Court’s docket reflect that the hearing for the Motion
25 for Judgment on the Second Amended Complaint was noticed for July 19, 2010. Civil Local
26 Rule 7.1 provides: “each party opposing a motion ... must file that opposition ... with the clerk
27 ... not later than fourteen (14) calendar days prior to the noticed hearing.” S.D. Cal. Civ. Local
28 Rule 7.1(e)(2). As of the date of this Order, Plaintiff has failed to file an opposition. The

1 Court concludes that “the public’s interest in expeditious resolution of litigation,” “the court’s
2 need to manage its docket,” and “the risk of prejudice to the defendants” weigh in favor of
3 granting the Motion for Judgment on the Second Amended Complaint for failure to file an
4 opposition. *Ghazali*, 46 F.3d at 53.

5 CONCLUSION

6 IT IS HEREBY ORDERED that the Motion for Judgment on the Second Amended
7 Complaint is GRANTED. (Doc. # 59). The Second Amended Complaint is DISMISSED
8 without prejudice as to Defendants OneWest Bank, FSB, NDEX West, LLC, and Deutsche
9 Bank National Trust Company.

10 DATED: July 23, 2010

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12 **WILLIAM Q. HAYES**
13 United States District Judge
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